Supreme Court, U.S.
FILED
JAN 5 1996
CLERK

No. 95-900

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

MUTUAL TRADING CORPORATION, MOHAMMAD SHAFIQ, and JOHN HAUPER,

Petitioners,

v.

UNIROYAL GOODRICH TIRE COMPANY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

JULIA D. MANNIX
DAVIS, MANNIX & McGRATH
125 South Wacker Drive
Suite 1700
Chicago, Illinois 60606
(312) 332-3033

CHARLES EDWARD JOERN, JR.
Counsel of Record
JERRY KOKOLIS
BURKE, WEAVER & PRELL
55 West Monroe Street
Suite 800
Chicago, Illinois 60603
(312) 263-3600

Attorneys for Respondent

Midwest Law Printing Co., Chicago 60610, (312) 321-0220

QUESTIONS PRESENTED

A. Whether the existence of at least four separate schemes, all of which were designed to swindle money from the victim over a three-year period, can constitute a "pattern of racketeering activity" in violation of Title 18 U.S.C. § 1962.

B. Whether the district court's award of $1.4 million in attorneys' fees to the plaintiff following a combined verdict of $2.8 million was reasonable and not a "penalty".

C. Whether the district court's trebling of damages pursuant to Title 18 U.S.C. § 1964(c) and the jury's award of punitive damages on state tort claims were correct and whether the issue was properly raised in the petition.

RULE 29.6 LISTING

Uniroyal Goodrich Tire Company ("Uniroyal Goodrich") is now merged into Michelin North America, Inc. ("Michelin"). The parent company of Michelin is Michelin Corporation. Uniroyal Goodrich presently exists as a business unit of Michelin known as Uniroyal Goodrich Tire Manufacturing. Accordingly, Uniroyal Goodrich does not have any subsidiaries.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
RULE 29.6 LISTING	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS WHY THE PETITION SHOULD BE DENIED	10
A. The Ruling Below That The Existence Of At Least Four Separate Schemes, All Of Which Were Designed To Swindle Money From The Victim Over A Three-Year Period, Can Constitute A "Pattern Of Racketeering Activity" Was Consistent With The Holdings Of *Sedima* and *H.J. Inc.*	10
B. The District Court's Award of $1.4 Million In Attorneys' Fees To The Plaintiff Following A Combined Verdict Of $2.8 Million Was Reasonable And Was Not A Penalty	13
C. The District Court's Trebling Of Damages Pursuant To 18 U.S.C. § 1964(c) And The Jury's Award Of Punitive Damages On State Tort Claims Were Correct, And The Issue Was Not Properly Raised In The Petition	16
CONCLUSION	17
APPENDICES	*infra*

TABLE OF AUTHORITIES

Cases:	PAGE
Braxton v. United States, 500 U.S. 344 (1991) ...	10
Ellis v. Dixon, 349 U.S. 458 (1955)	14, 16
Gent v. Collinsville Volkswagen, Inc., 116 Ill. App. 3d 496, 451 N.E.2d 1385 (5th Dist. 1983) ...	17
Hensley v. Eckerhart, 461 U.S. 424 (1983)	14, 15, 16
H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229 (1989)	11, 12
Liquid Air Corp. v. Rogers, 834 F.2d 1297 (CA7 1987), *cert. denied*, 492 U.S. 917 (1989)	13
Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985)	11

Statutes and Rules:	
Title 18 United States Code Section 1962	i
Title 18 United States Code Section 1964(c) ..	i, 16, 17
815 Illinois Compiled Statutes 505/10a	2, 15
Rules of the Supreme Court of the United States:	
Rule 10	14
Rule 14.1(g)	3
Rule 14.4	3

No. 95-900

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

MUTUAL TRADING CORPORATION, MOHAMMAD SHAFIQ, and JOHN HAUPER,

Petitioners,

v.

UNIROYAL GOODRICH TIRE COMPANY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

Respondent, Uniroyal Goodrich Tire Company ("Uniroyal Goodrich"), respectfully requests that this Court deny the petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 63 F.3d 516 (CA7

1995) ("the Opinion"). A copy of that Opinion is reproduced in petitioners' Appendix beginning on page 1A.[1]

Petitioners' Appendix does not include the district court's memorandum opinion awarding attorneys' fees and costs. The district court's memorandum opinion is reproduced in respondent's Appendix beginning on page A1.

STATUTORY PROVISIONS INVOLVED

In addition to the statutes set out in the petition, this case also involves the attorneys' fee provision of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/10a, which is reproduced in respondent's Appendix at page B1.

STATEMENT OF THE CASE

Introduction

Petitioners' Statement of the Case omits nearly all of the material facts this Court needs in order to decide whether the petition should be granted. Incredibly, neither petitioners' Statement of the Case nor their argument mentions the names of two primary defendants, or discusses their involvement in the fraudulent schemes which formed the basis of the case below. Petitioners' recitation of the underlying facts is so misleading as to be nearly unrecognizable from the case which was decided at trial and affirmed by the Seventh Circuit. Even a cursory comparison of the Seventh Circuit's opinion

---

[1] The Opinion below will be cited as "Opinion, Pet. __."

with petitioners' Statement of the Case reveals an egregious misstatement of the case.

In their Statement of the Case, petitioners discussed only matters involving their counterclaims.[2] In fact, not one of the "Questions Presented" makes any reference to petitioners' counterclaims. Pet. at 2-5. Thus, petitioners' Statement of the Case is wholly irrelevant to the issues raised in the petition. In violation of Supreme Court Rule 14.1(g), petitioners have failed to set out the facts material to consideration of the Questions Presented. Petitioners have also violated Supreme Court Rule 14.4 by failing to present with accuracy, what is essential to a ready and adequate understanding of the points requiring consideration. Petitioners' Statement of the Case does not even include the predicate acts which formed the pattern of racketeering activity in this case.

Petitioners are seeking a review of issues involving the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq*. It is inconceivable that petitioners can expect this Court to decide whether a "pattern of racketeering activity" existed when the petitioners do not even disclose the predicate acts themselves. On this basis, the petition for writ of certiorari should be denied.

General Nature Of The Case

The case before this Court involves illegal activity which occurred over a three-year period from 1987 to 1990. That illegal activity included a series of fraudulent

---

[2] It must be noted that petitioners' Statement of the Case contains a number of incorrect and misleading statements.

schemes perpetrated by a Chicago-based exporting company known as Mutual Trading Corporation ("MTC"); its president, Mohammad Shafiq ("Shafiq"); and its chief financial officer, John Hauper ("Hauper")[3] (collectively referred to as "the MTC Defendants"). The victim, Uniroyal Goodrich, manufactured and sold automotive and truck tires. MTC purchased tires from Uniroyal Goodrich and exported the tires to various international markets, including Saudi Arabia. Opinion, Pet. at 2A.

Richard Germano ("Germano"), a former Uniroyal Goodrich employee, was another defendant at trial.[4] MTC, through Shafiq and Hauper, conspired with Germano to defraud Uniroyal Goodrich through a variety of different strategies. The MTC Defendants gave Germano secret payments and other incentives. In return, Germano abused his positions within Uniroyal Goodrich, enabling MTC to receive hundreds of thousand of dollars worth of wrongful reimbursements and credits. Germano also benefitted MTC by divulging confidential company information. Opinion, Pet. at 2A-5A.

Germano was eventually caught in 1990 by Uniroyal Goodrich's internal auditors. He confessed to having received secret payments in exchange for his being "lenient" when reviewing MTC's accounts. Germano received at least $20,000 from the MTC Defendants.[5] When

---

[3] Hauper's name appears only in petitioners' initial prayer for relief and nowhere else in the petition.

[4] The petition also fails to reference Germano or his crucial involvement in the case.

[5] In early 1989, Hauper gave Germano airplane tickets to London, where Germano received $15,000. Germano hid the

(continued...)

confronted, Germano resigned from Uniroyal Goodrich after twenty years of employment. Opinion, Pet. at 4A, 6A.

The following is a summary of the various schemes.

The Detroiter Scheme

Uniroyal Goodrich allowed MTC to export "Detroiter" model tires into Saudi Arabia. Sometime in 1986, Palmer Industries, an unrelated party, managed to transport "AI" (appearance imperfect) Detroiter tires from Mexico to Saudi Arabia without Uniroyal Goodrich's knowledge or consent. Opinion, Pet. at 2A-3A.

MTC claimed that its Saudi customers were returning these AI tires because of alleged defects. MTC further stated that it paid these customers refunds. MTC then requested reimbursement from Uniroyal Goodrich. Before reimbursing MTC, Uniroyal Goodrich requested substantiation of the claims. Uniroyal Goodrich proposed that MTC submit a list of all the serial numbers of the tires for which MTC sought reimbursement. Opinion, Pet. at 2A-3A.

MTC submitted a list of serial numbers for 4,896 tires. These serial numbers matched Uniroyal Goodrich's record of tires manufactured in Mexico during the relevant time period. Based upon that list, Uniroyal Goodrich paid MTC in excess of $200,000. In fact, the serial

---

[5] (...continued)
money in a secret account at the Bank of Credit and Commerce International in Gibraltar. Shafiq sent another $5,000 to Germano ten months later. Germano failed to report any of the payments to the IRS until almost three years later, when his deposition was taken in this case.

number list was a fabrication. MTC concocted the list using confidential information supplied by Germano. Opinion, Pet. at 3A.

The Cooperative Advertising Scheme

The MTC Defendants also defrauded Uniroyal Goodrich by exploiting Germano's position as administrator of Uniroyal Goodrich's Cooperative Advertising Program. Under this "Co-op" program, Uniroyal Goodrich would credit its customers for approved advertising costs within certain limitations and restrictions. Germano was responsible for the administration of the Co-op program in the International Division during 1988 and for a portion of 1989. Opinion, Pet. at 3A.

Beginning in 1988, MTC requested advertising credits for outdoor billboards allegedly erected in Nigeria. At various times Hauper and others at MTC used the mails to request these fraudulent Co-op reimbursements. Over a period of time, Germano approved all reimbursements to MTC at 100% rather than the required 50%. This and other favors resulted in benefits to MTC under the Co-op program of close to $300,000. A subsequent investigation by Uniroyal Goodrich revealed that the billboards were not in existence until after the fraud was discovered and Germano had confessed. Opinion, Pet. at 3A-4A, 8A-9A.

The Volume Bonus Scheme

Another incentive program administered by Germano for Uniroyal Goodrich was known as "the volume bonus plan." Uniroyal Goodrich's volume bonus plan rewarded customers for a large volume of purchases. Under the program, tires shipped and paid for in a particular year

were used to calculate various rewards. Opinion, Pet. at 4A.

In December of 1987, Germano included in MTC's account an order for 50,000 tires which had not yet been manufactured, let alone purchased or delivered. Germano then failed to deduct the order from the 1988 purchases. Instead, he added another 80,000 non-existent tires to MTC's account. "The result of Germano's shenanigans was an unearned credit to MTC's account exceeding $230,000." Opinion, Pet. at 4A.

The Reno Scheme

In late 1989, Uniroyal Goodrich sold MTC a discontinued model of tire known as the "Reno." Hauper sent Germano a letter falsely claiming that the Reno tires shipped to MTC were either scrap or a much less expensive "ADV" model tire. Germano arranged for the Reno tires to be billed to MTC as if they were, in fact, ADV tires. Moreover, Germano disobeyed a Uniroyal Goodrich superior and allowed MTC's Reno letter of credit to expire. Germano's actions and omissions involving the Reno tires cost Uniroyal Goodrich an additional $144,000. Opinion, Pet. at 4A-5A, 7A-8A.

Pricing Concessions

MTC arranged for Germano to take a clandestine trip to its Chicago headquarters in December of 1988. Upon his return to Uniroyal Goodrich, Germano arranged for the forgiveness of more than $38,000 in interest on MTC's account. He also abused his position as pricing administrator and substantially underpriced tires sold to MTC. This under-billing benefitted MTC more than $150,000. Opinion, Pet. at 5A, 8A.

Fraudulent Financial Statements

MTC also made use of two sets of accounting records to defraud and mislead Uniroyal Goodrich's credit department. One set of books, discovered during litigation, showed MTC was in deep financial trouble. However, MTC created a second set of books which portrayed a financially healthy company. MTC used the fraudulent set of books to obtain credit from at least two banks. MTC also sent the false set of books to Dun & Bradstreet in order to obtain a favorable credit rating. Most importantly, MTC submitted this second set of books to Uniroyal Goodrich's credit department. This misinformation caused Uniroyal Goodrich to expand MTC's line of credit, eventually resulting in a loss of $1.1 million in tires sold to MTC.

Litigation History

Petitioners present an incomplete and misleading history of the litigation. In April of 1990, Uniroyal Goodrich filed a twelve-count complaint against MTC seeking recovery under various theories, including RICO, the Illinois Consumer Fraud Act, common law fraud, tortious interference with contract relations, and open account claims.[6] The open account claims were based on MTC's failure to pay for more than $1.1 million worth of tires sold to MTC.[7] Opinion, Pet. at 5A.

---

[6] Petitioners neglect to mention that the trial court had jurisdiction to hear and determine this controversy pursuant to 18 U.S.C. § 1964; 28 U.S.C. § 1331; and the court's supplemental jurisdiction as to the state law claims, 28 U.S.C. § 1367.

[7] Contrary to the allegation in footnote 6 of the petition, Uniroyal Goodrich did not claim the open accounts were predicate acts under RICO.

MTC later filed a five-count counterclaim. The trial court granted summary judgment in Uniroyal Goodrich's favor on certain of MTC's counterclaims. MTC withdrew several other counterclaims during the course of the trial. Eventually the trial court entered judgment as a matter of law in Uniroyal Goodrich's favor on the remaining counterclaims at the close of all the evidence. Opinion, Pet. at 5A.

The pre-trial litigation consisted of four years of heavily disputed discovery and motion practice. The trial itself lasted the entire month of May 1994. Almost thirty witnesses were called and more than 1,300 exhibits were entered into evidence. Opinion, Pet. at 16A

Prior to the jury's verdict, the trial court awarded Uniroyal Goodrich nearly $1.8 million on its open account claims. The jury then returned a verdict in favor of Uniroyal Goodrich on each and every count. The jury awarded Uniroyal Goodrich $220,000 on the remainder of its open account claims and $156,000 under the RICO and other fraud claims. The jury also awarded punitive damages in the following amounts: $20,000 against Germano, $250,000 against Shafiq, $50,000 against Hauper and $0 against MTC. After trebling of the RICO damages and after including all other damages, Uniroyal Goodrich was awarded approximately $2.8 million. The trial court later awarded approximately $1.4 million in attorneys' fees and $45,000 in costs. Opinion, Pet. at 5A, 1B-2B, 1C-4C.

The judgment as a matter of law, the verdict and the award of attorneys' fees and costs were all affirmed by the Seventh Circuit. The decision was unanimous. The MTC Defendants then sought a rehearing with a suggestion for rehearing *en banc*. The petition for rehearing

was denied. All of the judges on the original panel voted to deny, and none of the other judges in active service requested a vote thereon. Opinion, Pet. at 19A, 20A.

REASONS WHY THE PETITION SHOULD BE DENIED

A. The Ruling Below That The Existence Of At Least Four Separate Schemes, All Of Which Were Designed To Swindle Money From The Victim Over A Three-Year Period, Can Constitute A "Pattern Of Racketeering Activity" Was Consistent With The Holdings Of *Sedima* And *H.J. Inc.*

Conspicuous by its absence is any discussion by petitioners of any reason why certiorari should be granted. *See Braxton v. United States*, 500 U.S. 344, 347 (1991) (discussing the purposes and use of certiorari jurisdiction). Petitioners have not argued that the Seventh Circuit law regarding RICO is in conflict with any other circuit. Petitioners have not made this argument because the Seventh Circuit is not in conflict with any other circuit. Petitioners have not argued that the Seventh Circuit in this case applied the wrong standard of law. Indeed, the Seventh Circuit appropriately applied the tests set forth by this Court. Petitioners have not argued that this case presents any issues of special importance or any issues of consequence that would affect any other case. Petitioners cannot make this argument because the determination of a pattern of racketeering is particularly fact specific and must be addressed on a case-by-case basis.

What petitioners do complain about is the sufficiency of the evidence presented at trial proving a pattern of racketeering. Petitioners contend that "UGTC's pleadings

failed to allege and its evidence failed to establish that MTC was either an association existing for long-term criminal purposes or that it committed criminal acts as a regular way of conducting its legitimate business." Pet. at 8.

This argument, however, is premised on a gross mischaracterization of the record: claiming that the parties were in a successful legitimate business relationship gone sour. The facts established at trial prove an entirely different proposition. As the Seventh Circuit emphatically stated:

> [A]n ever-increasing number of authorities including the jury, the trial court, and now this court, believe that Uniroyal presented a very persuasive RICO case.

Opinion, Pet. at 16A.

Although petitioners state in their heading that the decision of the Seventh Circuit conflicts with this Court's holdings in *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989) and *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985), nowhere in the argument is this "conflict" discussed. Indeed, petitioners would be hard pressed to make such an argument since the correct standard of law was discussed and applied in this case.

This Court in *H. J. Inc.* discussed the requirements for establishing a pattern of racketeering activity under the RICO statute.

> Congress had a more natural and common-sense approach to RICO's pattern element . . . a more stringent requirement than proof simply of two predicates, but also envisioning a concept of sufficient breadth that it might encompass multiple predicates within a single scheme that were related and that amounted

> to, or threatened the likelihood of, continued criminal activity.

492 U.S. at 237.

This pattern requirement is fulfilled where the predicate acts are related and amount to or pose a threat of continued criminal activity. *Id.* at 239. The relatedness component is present "if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." *Id.* at 240.

Continuity, as defined by this Court, can be established either "by proving a series of related predicates extending over a substantial period of time" or "by showing that the predicate acts or offenses are part of an ongoing entity's regular way of doing business." *Id.* at 242. The determination of continuity and relatedness is a *fact specific inquiry* for the courts. *Id.* at 242, 243.

Unquestionably the Seventh Circuit applied the correct standard of law to the facts of this case. Petitioners have not argued otherwise. The Seventh Circuit applied the *Sedima* and *H.J. Inc.* test of relatedness and continuity to the facts of this case, noting that these elements are particularly a *factual determination*. After reviewing the law, the Seventh Circuit found that there was more than sufficient evidence adduced at trial that proved that MTC had indeed engaged in a pattern of racketeering.

The facts establish beyond the pale that the defendants engaged in a pattern of racketeering activity which substantially injured Uniroyal:

> [P]roven at trial were the existence of at least four separate schemes all of which were designed to

> swindle money from Uniroyal and all of which utilized the mails and wires to further their ends. . . . The various predicates of mail and wire fraud occurred repeatedly over a period as long as three years and each scheme, though inflicted upon the same victim, caused separate and distinct injuries like those caused in *Liquid Air*.[8]

Opinion, Pet. at 13A. The Seventh Circuit did not err when it affirmed the jury's verdict of a violation of the RICO statute on these facts. As the Seventh Circuit held:

> If this case is in any way distinguishable from *Liquid Air*, it is that it presents a stronger case for liability; the facts of this case put it squarely within RICO's ambit.

Opinion, Pet. at 13A.

Petitioners have failed to give this Court any valid reason why the petition for writ of certiorari should be granted. There is no split in the circuits, nor is there a conflict between this case and any decision of this Court. Petitioners have presented no matter of special importance, nor any other compelling reason to grant the petition on this issue.

B. The District Court's Award Of $1.4 Million In Attorneys' Fees To The Plaintiff Following A Combined Verdict Of $2.8 Million Was Reasonable And Was Not A Penalty.

Petitioners contend that the awarding of $1.4 million in attorneys' fees constitutes a "penalty" in light of the jury's $156,000 verdict on Uniroyal Goodrich's RICO

---

[8] *Liquid Air Corp. v. Rogers*, 834 F.2d 1297 (CA7 1987), *cert. denied*, 492 U.S. 917 (1989).

claims. Petitioners have cited absolutely no authority to support their assertion that the fee award constitutes a "penalty." Petitioners have not even argued that the district court or the Seventh Circuit misapprehended the law.[9] Rather, petitioners simply disagree with the district court's and Seventh Circuit's findings that the plaintiff's attorneys expended a reasonable amount of time on this matter. In short, petitioners ask this Court to exercise its jurisdiction to set aside what petitioners consider to be erroneous factual findings and a misapplication of the law. Thus, the petition ignores the admonitions of Supreme Court Rule 10, which warns that certiorari is rarely granted "when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

As this Court noted in *Hensley v. Eckerhart*, 461 U.S. 424 (1983), a district court has discretion in determining the amount of a fee award "in view of [its] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Id.* at 437.

Moreover, petitioners have neglected to mention the material facts necessary for this Court to consider whether to accept this case for consideration. By any objective measure, Uniroyal Goodrich obtained a resounding victory. At trial, it obtained a judgment against the defendants totalling *more than $2.8 million*. The jury

---

[9] Furthermore, by failing to argue before the trial court or the appellate court that the fees constitute a penalty, petitioners waived this argument. *Ellis v. Dixon*, 349 U.S. 458, 460 (1955).

returned a verdict in favor of Uniroyal Goodrich and against the defendants on each and every count.[10]

The district court found that "all of Uniroyal's claims were based upon related theories and on a common nucleus of facts generally revolving around the defendants' efforts to defraud Uniroyal." Memorandum Opinion at A2. Petitioners do not challenge this finding. Based on its review, the district court concluded that Uniroyal Goodrich was entitled to recover fees on all of the work done on the related claims. The district court's conclusion is entirely consistent with this Court's holding in *Hensley*:

> In [some] cases the plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories. . . . Such a lawsuit cannot be viewed as a series of discrete claims. Instead the district court should focus on the significance of *the overall relief obtained by the plaintiff* in relation to the hours reasonably expended on the litigation.

Hensley, 461 U.S. at 435 (emphasis added). Uniroyal Goodrich's recovery of $2.8 million in damages more than justifies the fees that it was awarded.

Nevertheless, petitioners challenge the district court's factual finding that the amount of time that Uniroyal Goodrich's counsel expended in conducting this litigation was reasonable. The district court, however, thoroughly addressed and disposed of each of petitioners' objections to Uniroyal Goodrich's fee petition. Memorandum Opin-

---

[10] In addition to ignoring the total amount of the verdict, petitioners neglect to mention that the district court awarded attorneys' fees to Uniroyal not simply under RICO, but also pursuant to Shafiq's personal guaranty and the Illinois Consumer Fraud Act, 815 ILCS 505/10a. Opinion, Pet. at 15A.

ion at A2-A6. The district court oversaw most aspects of the four years of pre-trial litigation and presided over the four-week jury trial. Thus, it was in the best position to determine whether the amount of time expended was reasonable. *See Hensley*, 461 U.S. at 437.

The Seventh Circuit reviewed the district court's award in detail and had the opportunity to review the district court record. It unanimously held that the fees awarded were reasonable. In disposing of the defendants' objections to the fee award, the court specifically found: "The complexity of the case justified the efforts of the team of lawyers." Opinion, Pet. at 16A.

In short, petitioners' disagreement with the reasonableness of the plaintiff's fee award—an award that was scrutinized and affirmed on appeal—is not a sufficiently compelling reason to grant their petition.

C. The District Court's Trebling of Damages Pursuant To 18 U.S.C. § 1964(c) And The Jury's Award Of Punitive Damages On State Tort Claims Were Correct, And The Issue Was Not Properly Raised In The Petition.

In a last-ditch effort to gain this Court's attention, petitioners have attempted to make an issue out of whole cloth: namely, that the plaintiff must choose its damage award. However, petitioners failed to raise this issue in their appeal to the Seventh Circuit. Nowhere is this issue mentioned in any of the briefs filed by petitioners when they were before the Seventh Circuit. Thus, petitioners have waived this issue, and there is no reason for this Court to consider it. *Ellis*, 349 U.S. at 460.

Furthermore, petitioners have failed to point to a conflict among the circuits regarding this issue. Moreover,

petitioners do not claim that the decision of the lower court trebling the RICO damages is in conflict with any decision of this Court. Petitioners fail to provide this Court with any compelling reason to accept the petition for writ of certiorari on this point.

Trebling of the RICO award is mandatory under the statute. 18 U.S.C. § 1964(c). The award of punitive damages under state law claims is specifically authorized under Illinois law. *Gent v. Collinsville Volkswagen, Inc.*, 116 Ill. App. 3d 496, 451 N.E.2d 1385 (5th Dist. 1983). The jury instructions on this issue were clear and without objection in the trial court. Instead, the jury was given proper RICO and punitive damage instructions, which petitioners do not contest. Petitioners merely want this Court to lower the damage award. That is not a proper basis for certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

JULIA D. MANNIX
DAVIS, MANNIX & McGRATH
125 South Wacker Drive
Suite 1700
Chicago, Illinois 60606
(312) 332-3033

CHARLES EDWARD JOERN, JR.
Counsel of Record
JERRY KOKOLIS
BURKE, WEAVER & PRELL
55 West Monroe Street
Suite 800
Chicago, Illinois 60603
(312) 263-3600

Attorneys for Respondent